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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO GERMAN
GONZALEZ,

Defendant and Appellant.

2d Crim. No. B298534
(Super. Ct. No. BA468637)
(Los Angeles County)

Francisco German Gonzalez appeals the judgment entered after a jury convicted him on three counts of second degree robbery (Pen. Code,¹ § 211), and found true allegations that he personally used a firearm in committing two of the robberies (§ 12022.53, subd. (b)). The trial court sentenced him to 14 years in state prison and ordered him to pay \$1,140 in victim

¹ All statutory references are to the Penal Code unless otherwise noted.

restitution. Appellant contends the evidence is insufficient to support his conviction on count 2.² We affirm.

STATEMENT OF FACTS

Robbery of Alberto Jurado (Count 3)

On the morning of April 12, 2018, Alberto Jurado was with his friends in a rose garden adjacent to the University of Southern California (USC) when they were approached by appellant and another man. Appellant asked Jurado and his friends if they were gang members and they all replied that they were not. Appellant asked to see their cellphones and Jurado and his friends showed them to him. Appellant and his companion approached Jurado and accused him of being a gang member. Appellant yanked Jurado's cellphone from his hand and walked away with it.

Robberies of Joseph Reyes (Count 1) and Isaias Reyes (Count 2)

On the afternoon of May 27, 2018, friends Joseph Reyes and Isaias Reyes were leaving the USC soccer field when appellant and two other men approached them. Appellant asserted that he had seen Joseph and Isaias with members of the 18th Street Gang. Joseph and Isaias denied that they were gang members and told appellant they were just playing soccer.

Appellant lifted up his shirt to reveal a handgun in his waistband. He ordered Joseph and Isaias to show him their cellphones to prove they had no photographs of 18th Street gang

² Appellant also claimed in his opening brief that his trial attorney provided constitutionally ineffective assistance of counsel by stipulating that appellant owed victim Joseph Reyes \$1,140 in victim restitution. He withdraws the claim, however, in his reply brief.

members. Appellant also told them to walk away from the field and sit down and they complied.

Appellant ordered Joseph and Isaias to empty their pockets and they both removed their wallets and cellphones. Appellant looked through Isaias's wallet and discovered there was no money inside. Appellant also looked through Joseph's wallet, discovered cash, and removed it. Appellant asked Joseph and Isaias "if that was all [they] had" and said he was going to take their wallets. Joseph asked appellant if he would allow them to keep their identification cards. Appellant replied, "You know what? I am feeling nice today. I'm just going to give you guys back your stuff." Appellant kept Joseph's cash and put the wallets and phones on the ground. As appellant walked away with his companions, he told Joseph and Isaias not to follow them or he would shoot them.

DISCUSSION

Appellant contends the evidence is insufficient to support his conviction of robbery on Count 2. He argues that his "aggression towards" Joseph and Isaias "was based on his belief that they were gang members, not on a plan to rob them." Although he acknowledges that he took cash from Joseph's wallet, he reasons that "since no money existed in Isaias' wallet, [he] never actually took manual possession of anything that he had an intention to keep/steal."

In reviewing claims of insufficient evidence, we "must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence—i.e., evidence that is credible and of solid value—from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." (*People v. Nguyen* (2015))

61 Cal.4th 1015, 1054-1055, internal quotation marks omitted.) We “presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) We do not resolve evidentiary conflicts. (*People v. Yeoman* (2003) 31 Cal.4th 93, 128. “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the jury's verdict.” (*Zamudio*, *supra*, at p. 357.)

“Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.’ [Citation.] The ‘taking’ aspect of robbery consists of two parts— “gaining possession of the victim’s property and asporting or carrying away the loot.” [Citations.]” (*In re Aaron J.* (2018) 22 Cal.App.5th 1038, 1058.) “The asportation element of a robbery allegation is satisfied when the accused exercises dominion and control over the victim’s possessions through some small movement of those possessions. [Citation.] Indeed, cases repeatedly emphasize that the crime of robbery is completed upon any asportation, however slight or short. [Citations.] Moreover, ‘once there has been a taking, “it is no defense that the property taken was restored, even though this occurs almost immediately.” [Citations.]” (*Id.* at pp. 1058-1059, italics omitted.) “The fact that the thief . . . may change his mind immediately after the theft, because he concludes that the property is of insufficient value to warrant him in retaining it, does not relieve him of the consequences of the theft.” (*People v. Quiel* (1945) 68 Cal.App.2d 674, 679.) Under such circumstances, the jury may infer the defendant’s requisite intent to commit a

robbery. (*People v. Deleon* (1982) 138 Cal.App.3d 602, 606, citing *People v. Hall* (1967) 253 Cal.App.2d 1051, 1054 (*Hall*).)

The evidence is plainly sufficient to support appellant's conviction of robbery on count 2. The evidence unequivocally demonstrates that appellant took both Joseph's and Isaias's wallets by force or fear. He found cash in Joseph's wallet and removed it. He took no cash from Isaias's wallet, but only because there was none. The fact that he subsequently abandoned both wallets is of no moment.

Numerous cases are directly on point. (See, e.g., *People v. Hill* (1998) 17 Cal.4th 800, 851-852 [substantial evidence supported finding that defendant committed robbery where he forcibly took victim's purse, found nothing of value in it, and returned it to her]; *People v. Carroll* (1970) 1 Cal.3d 581, 583-584 [defendant's taking of victim's wallet was robbery even though defendant discarded wallet after discovering it was empty]; *People v. Pruitt* (1969) 269 Cal.App.2d 501, 502-505 [same]; *Hall, supra*, 253 Cal.App.2d at p. 1054 [same].) Appellant's efforts to distinguish this well-settled authority disregard the standard of review, which compels us to view the evidence in the light most favorable to the judgment. (*People v. Zamudio, supra*, 43 Cal.4th at p. 357.)

Appellant also downplays the significance of the undisputed fact that he took the money he found in Joseph's wallet. "In the instant case the evidence disclose[d], and appellant does not contest the fact, that [he] . . . robbed [Joseph] . . . by taking money from [his wallet]. Although [Isaias] was not permanently deprived of property, he was present and treated in the same manner as [Joseph] The jury could reasonably infer from the fact that appellant [took and] searched . . .

[Isaias's] wallet, that he possessed the requisite intent to deprive [Isaias] permanently of any valuable property he might thus discover. The fact that the wallet was returned . . . does not absolve appellant of any element essential to support his conviction of robbery. [Citations.] The fact that [Isaias's] wallet was empty of money does not mitigate appellant's obvious guilty intent. [Citation.] [T]he circumstances surrounding the [taking and search] of [Isaias's] wallet . . . , occurring within the time and during the period of the conceded robber[y] of [Joseph] unequivocally disclose appellant's guilty intent to rob [Isaias] as well." (*Hall, supra*, 253 Cal.App.2d at pp. 1054-1055.)

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Michael D. Abzug, Judge
Superior Court County of Los Angeles

Laura R. Sheppard, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Scott Taryle, Supervising Deputy Attorney General, and Michael Katz, Deputy Attorney General, for Plaintiff and Respondent.